

AUG 25 1995

WQP-16J

Ms. Patricia Burke, Manager
Water Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Ms. Burke:

The guidance I have enclosed pertains to the Environmental Protection Agency (U.S. EPA) issuance of permits to all permitted facilities on Federal Indian Reservations. The purpose is to articulate key points for U.S. EPA's implementation of the National Pollutant Discharge Elimination System (NPDES) program.

U.S. EPA regulations contemplate that States may be able to demonstrate authority to issue NPDES permits on Federal Indian Reservations. However, U.S. EPA is not aware of any cases where U.S. EPA has approved a State's demonstration of NPDES permit authority. U.S. EPA is aware that some States have issued NPDES permits on reservation lands and it is assumed that those permits contain applicable effluent limits.

At this time, ~~the~~ U.S. EPA is trying to identify the facilities within the exterior boundaries of the reservations in your State. We have contacted the tribes and asked for their assistance in identifying dischargers within the exterior boundaries of their reservation. Enclosed is a list of facilities which the White Earth Tribe acknowledge as dischargers on the reservation. U.S. EPA, at this time, is bringing the list to your attention for concurrence. Please respond at your earliest convenience. We are available to discuss any concerns regarding jurisdiction.

If you have any questions regarding the contents of the list, please call Ramona Sherman at (312) 886-7795 or John Colletti at (312) 886-6106.

Sincerely yours,

Timothy C. Henry, Chief
Permits Section

Enclosure

bcc: Johnson-Schultz
M. Rydell
R. Sherman

WQP-16J F:Indian.res R.Sherma.pal 8-22-95

CALLAWAY - MN0022985 4952 MINOR

CALLAWAY CITY HALL
CALLAWAY, MINN. 56521

MAHNOMEN - MN0024066 4952 MINOR

MAHNOMEN CITY HALL
MAHNOMEN, MINN. 56557

OGEMA - MN0049794 4952 MINOR

OGEMA CITY HALL
OGEMA, MINN. 56569

WAUBUN - MN0022110 4952 MINOR

WAUBUN CITY HALL
WAUBUN, MINN. 56589

NELSON QUALITY EGGS - MN0031682 0252 MINOR

NELSON QUALITY EGGS
R.R. 3, BOX 88
BAGLEY, MINN. 56621

WELDON NELSON - MN0039764 0252 MINOR

WELDON NELSON
R.R. 3, BOX 51
BAGLEY MINN. 56621

WELDON NELSON - MN0039772 0252 MINOR

WELDON NELSON
R.R. 3, BOX 51
BAGLEY, MINN. 56621

NELSON QUALITY EGGS - MN0045675 0252 MINOR

NELSON QUALITY EGGS
R.R. 3, BOX 88
BAGLEY, MINN. 56621

MINN

MEMORANDUM OF AGREEMENT BETWEEN THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND THE MINNESOTA POLLUTION CONTROL AGENCY FOR THE
APPROVAL OF THE STATE NPDES PERMIT PROGRAM

I. RECITALS

(1) Parties. The parties to this agreement (hereinafter, the Agreement) are the United States Environmental Protection Agency (hereinafter, the EPA) and the Minnesota Pollution Control Agency (hereinafter, the Agency).

(2) Purpose. It is the purpose of this Agreement to provide the terms and conditions for approval by the EPA of the State of Minnesota's National Pollutant Discharge Elimination System (hereinafter, NPDES) permit program under the Federal Water Pollution Control Act Amendments of 1972 (hereinafter, the Act) and the EPA's guidelines for "State Program Elements Necessary for Participation in National Pollutant Discharge Elimination System" (hereinafter, the Guidelines) promulgated in the Federal Register, Vol. 37. No. 247, Friday, December 22, 1972, 40 C.F.R. Part 124. Various sections of the Guidelines require the Chief Administrative Officer of a state water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the Guidelines are to be implemented. To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Director of the Agency (hereinafter, the Director), the Agency, and the Regional Administrator of the EPA for Region V (hereinafter, the Regional Administrator). The Sections of this Agreement are numbered in accordance with the Sections of the Guidelines.

II. AGREEMENT

General

Section 124.4 (Authority for State program procedures).

(1) The Agency adopted on March 19, 1974, WPC 36, an Agency regulation relating to NPDES permit procedures consistent with the Guidelines.

(2) The Agency shall employ the procedures of WPC 36 pending its becoming properly filed and thus having the force and effect of law. The Agency expects that WPC 36 will have the force and effect of law on or before May 1, 1974.

Acquisition of Data

Section 124.22 (Receipt and Use of Federal Data).

(1) The purposes of this section are: (a) to provide for the transfer of data bearing on NPDES permit determinations from the EPA to the Agency, and (b) to insure that any deficiencies in the transferred NPDES forms shall be corrected prior to issuance of a NPDES permit.

(2) Commencing immediately after the effective date of this Agreement the Regional Administrator shall transmit to the Director a list of all NPDES permit applications received by EPA. This list shall include the name of each discharger, SIC Code, application number, and indicate whether EPA has determined which applications are complete.

(3) After receipt of the list, the Director shall identify

the priority order to be used by the EPA to transmit the application files to him. The application file shall include the NPDES permit application and any other pertinent data collected by EPA. The application files shall be transmitted to the Director according to the priority order identified, and the EPA shall retain one copy of each file transmitted to the Director.

(4) For an application identified as incomplete or otherwise deficient by the EPA, the Director shall obtain from the discharger the information identified by the EPA as being necessary to complete the application. The Director, at his discretion, may also obtain additional information for those applications identified by the EPA as complete or incomplete to update or process the application.

(5) Once the Director determines that an application is complete, he shall transmit two copies of the completed application and a cover letter indicating that the application has been determined to be complete to the Regional Administrator, Attention: Permit Branch. If the EPA concurs that the application is complete, one copy shall be routed to the Regional Data Management Section, Surveillance Division, through the Compliance Section, Enforcement Division, for processing into the National Data Bank and the other copy shall be placed in the NPDES Permit Branch file.

(6) The Director shall be timely advised by letter that the Regional NPDES Permit Branch concurs with his determination and that a copy of the application has been transmitted to the Data Management Section. If the EPA determines that the application is not

complete, the Regional NPDES Permit Branch shall identify the deficiencies by letter to the Director. The Director shall attempt to resolve all deficiencies within 20 days of date of receipt of notification.

(7) The Regional Administrator shall provide written comment on an application for a NPDES permit no later than 20 days from the date of receipt of application from the Agency. The Regional Administrator may within this 20 day period request additional time not to exceed a total of 40 days. The Director may assume, after verification of receipt of the application, that no comment is forthcoming if he has received no response from the Regional Administrator at the end of 20 days.

(8) No NPDES application shall be processed by the Agency until all deficiencies identified by the EPA are corrected and the Director receives a letter from the EPA concurring with the Director that the application is complete.

Section 124.23 (Transmission of Data to Regional Administrator).

(1) The Director shall transmit to the Regional Administrator copies of completed NPDES application forms submitted by the applicant to the State. When the State determines that the NPDES application forms received from the discharger are complete, two copies of the forms with a cover letter indicating that the forms are complete shall be transmitted to the Regional Administrator, attention: Permit Branch. If EPA concurs with the Director, one

copy shall be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the General Point Source File (hereinafter, GPSF) and the other copy shall be placed in the Regional NPDES Permit Branch file. The Director shall be advised by letter that the EPA concurs with his determination and that a copy of the NPDES application form has been transferred to the EPA Regional Data Management Section. The State may input directly into the GPSF subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section. If the EPA determines that the NPDES application form is not complete, the deficiencies shall be identified by letter to the Director. No NPDES application shall be processed by the Agency until the deficiencies are corrected and it has been advised in writing by the EPA that the NPDES application form is complete.

(2) Upon receiving a NPDES application form from the Director, should the Regional Administrator identify any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge, and notifies the Director, the Director shall require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.

(3) When requested by the Regional Administrator, the Director shall transmit copies of notice received by him from publicly-owned treatment works pursuant to Section 124.45(d) and (e) of the Guidelines within 15 days of receipt of the request.

Section 124.35(b) and (c) (Public Access to Information).

(1) The Director shall protect any information (other than effluent data) contained in such NPDES form, or other records, reports or plans as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If, however, the information being considered for confidential treatment is contained in a NPDES form, the Director shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the EPA's Office of General Counsel, stating the reasons for his disagreement with the determination of the Director. The Regional Administrator shall simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days

following the mailing of such notice, the Regional Administrator shall communicate to the Agency his decision not to concur in the withholding of such information, and the Agency and the Regional Administrator shall then make available to the public upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA shall be conclusive unless reviewed in an appropriate district court of the United States.

(2) Any information accorded confidential status whether or not contained in a NPDES form, shall be disclosed by the Agency upon written request therefor, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential.

Terms and Conditions of NPDES Permits

The Agency has the authority under this Memorandum of Agreement to include special conditions in permits for municipal dischargers that will not be able to achieve the effluent limitations of Section 301(b)(1) of the Act due to the lack of Title II Federal grant money for publicly owned treatment works. If Federal money is essential for capital improvements to meet the requirements of Section 301(b)(1) and is not available, the permit would not require any such improvements. The special permit conditions shall include, but not be limited to, the following: (a) stringent operation and maintenance conditions

and needed minor facilities modifications, to the full extent of State and local capabilities and available funds; (b) interim compliance objectives to be achieved before July 1, 1977; and (c) upon the availability of Federal funding, the permit shall be immediately subject to reconsideration and modification with a schedule for compliance at the earliest possible dates. The Agency shall keep all such permits under close review to insure compliance with the special conditions.

Section 124.44(d) (Schedule of Compliance in Issued NPDES Permits).

On the last day of the months of February, May, August, and November, the Director shall transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a NPDES permittee to comply with an interim or final requirement or to notify the Director of compliance or noncompliance with each interim or final requirement (as required pursuant to Section 124.44(b) of the Guidelines), and any revision or modification of a schedule of compliance. The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) The name and address of each noncomplying NPDES permittee;
- (2) A short description of each instance of noncompliance (e.g. Failure to submit preliminary plans, 2 week delay in commencement of construction of treatment facility, failure to notify the Direc-

tor of compliance with an interim requirement to complete construction by June 30th, etc.);

- (3) A short description of any action or proposed actions by the permittee or the Director to comply or enforce compliance with an interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections, etc.).

Section 124.46 (Transmission to Regional Administrator of Proposed NPDES Permits).

(1) At the time a public notice required by Section 124.32 of the Guidelines is issued, the Director shall transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit and a list of all persons receiving the public notice, fact sheets and proposed NPDES permit, together with a description of any other procedure used to circulate the public notice, to the Regional Administrator, Attention: NPDES Permit Branch. The information transmitted with the proposed permit shall include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.

(2) After a public notice period has expired, the Agency shall consider all comments received as a result of the public notice and may modify the proposed NPDES permit as it considers appropriate. Public hearings may be held as provided for in Section 124.35 of the Guidelines. If a public hearing is held, the Agency shall consider all comments and may modify the proposed

NPDES permit as it considers appropriate. If a public hearing is requested and should the Agency decide not to hold a public hearing, the Director shall provide the Regional Administrator and all parties requesting the hearing, a written explanation of why the hearing was not held before submitting the proposed NPDES permit to the Regional Administrator for approval.

(3) If a proposed NPDES permit issued with a public notice is modified as a result of the public notice or public hearing, a revised copy of the proposed NPDES permit shall be transmitted to the Regional Administrator, Attention: NPDES Permit Branch, together with a copy of all statements received from the public notice, and where a public hearing is held, a summary of all objections with a request for approval to issue the NPDES permit. In lieu of a summary, the Director may provide a verbatim transcript of the entire public hearing.

(4) If a proposed NPDES permit is not revised after a public notice or where held, a public hearing, the Director shall notify the Regional Administrator, Attention: NPDES Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and request approval to issue the NPDES permit. The request for approval shall include a copy of all written statements received from the public notice.

(5) The Regional Administrator shall respond within 15 days from the date of receipt of the letter requesting final approval to issue or deny the proposed permit. The Regional Administrator pursuant to any right to object provided in Section 402(d)(2) of the

Act, may comment upon, object to or make recommendations with respect to the proposed NPDES permit. If no written comment is received by the Agency from the Regional Administrator within the 15 days, the Director may assume, after verification of receipt of the proposed permit, that the EPA has no objection to the issuance of the NPDES permit.

(6) The Agency shall not issue a NPDES permit for a discharge to which the Regional Administrator has objected in writing pursuant to any right to object. The resolution by the Director of these objections shall be communicated in writing by the Director within 20 days to the Regional Administrator and no permit shall be issued before written approval of such resolution by the Regional Administrator is received by the Director. If the Regional Administrator does not respond within 20 days after receipt of the Director's resolution, the Director may assume that the EPA has no objection to the issuance of the NPDES permit, and may issue such permit, as resolved.

(7) No later than 120 days from the effective date of this agreement the Regional Administrator shall consider the waiver of his rights to review, object to, or comment upon the proposed NPDES permit for any application which relates to minor discharges, except for any application which involves the discharge of toxic wastes or discharges to the waters that intersect or form a portion of Minnesota's borders. The Regional Administrator shall promptly notify the Agency of his decision. This initial waiver shall not be construed as limiting the right of the Regional Administrator to waive in writing at a later date other categories, classes or

types of permits upon an evaluation of the Agency's performance in implementing the permit program.

Section 124.47 (Transmission to Regional Administrator of Issued NPDES Permits).

(1) The Director shall transmit to the Regional Administrator two copies of every issued NPDES permit, Attention: NPDES Permit Branch, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.

(2) The Director shall transmit the above information at the same time the NPDES permit is issued by the Agency to the applicant, together with a copy of the Director's letter to the applicant forwarding the NPDES permit.

Monitoring, Recording, and Reporting

Section 124.61(b) (Monitoring).

(1) Permit conditions issued by the Agency for any discharge authorized by a NPDES permit which (a) is not a minor discharge, (b) the Regional Administrator requests, in writing, be monitored, or (c) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Act, shall require monitoring by the permittee for at least the following:

(i) Flow (in gallons per day); and

(ii) All of the following pollutants:

- (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
- (b) Pollutants which the Agency finds, on the basis of information available to it, could have a significant impact on the quality of navigable waters;
- (c) Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and
- (d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.

(2) At any time before a NPDES permit is issued, the Regional Administrator may make the requests specified in paragraphs 1(b) and (c) herein.

(3) The Director shall transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring report forms, either by (a) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (b) by direct entry into the GPSF data system.

Section 124.62(c) (Recording of Monitoring Activities and Results).

During the period of a NPDES permit and any unresolved litigation, upon the written request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal three year retention of any records of monitoring activities and results.

Enforcement Provisions

Section 124.71 (Receipt and Follow-up of Notification and Reports).

(1) The Agency shall evaluate data submitted by NPDES permittees in NPDES reporting forms and other forms supplying monitoring data, for possible enforcement or remedial action. The Director shall transmit to the Regional Administrator, Compliance Section, Enforcement Division, copies of the forms together with his evaluation on the last day of the months of February, May, August and November, as of 30 days prior to the date of such report, where the data shows that effluent limits in the NPDES permits are exceeded. Where monitoring data show that effluent limits are exceeded, the Director shall identify the effluent limits exceeded, describe briefly any actions or proposed actions by the NPDES permittee or the Agency to comply or enforce compliance with the limits and describe any details which tend to explain or mitigate an instance of non-compliance.

(2) If the Director determines that any condition of the permit for publicly-owned treatment works is violated, he shall notify the Regional Administrator and the Agency shall consider taking action relating to proceedings to restrict or prohibit the introduction of pollutants into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

Section 124.72 (Modification, Suspension and Revocation of NPDES Permits).

The Director may, upon request of the permittee, revise or modify a schedule of compliance in an issued NPDES permit if he

determines good and valid cause (such as an act of God; strike, flood, materials shortage, or other circumstances over which the permittee has little or no control) exists for such revision and if within 30 days following receipt of notice from the Director, the Regional Administrator does not object in writing to any modifications.

Section 124.73(b)(2) (Emergency Notification).

The Director or his authorized representative shall notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative shall utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the district offices or the regional offices, as the Director determines appropriate.

Section 124.80(d) (Control of Disposal of Pollutants into Wells).

The Regional Administrator shall transmit to the Director any policies, technical information or requirements promulgated by the Administrator in regulations issued pursuant to the Act or in directives issued to EPA Regional Offices concerning the disposal of pollutants into wells.

Miscellaneous

(1) Attached hereto is a list of major dischargers which

shall be given priority in processing and a schedule for such processing. Also attached is a six month schedule covering all permits to be processed in the six month period. This is the first part of the schedule aimed at issuing all principal and the majority of all non-principal NPDES permits in the State of Minnesota by December 31, 1974, and all remaining non-principal NPDES permits by June 30, 1975. The schedule shall be expanded by the Director on a quarterly basis thereafter to identify the remainder of the NPDES permits to be processed until all permits are issued. A copy of each quarterly schedule shall be forwarded by the Director to the Regional Administrator for review.

(2) This Memorandum of Agreement may be modified by the Agency and the Regional Administrator following the public hearings to evaluate the State's Section 402(b) program submittal and the hearing on the proposed NPDES regulation on the basis of issues raised at the hearings. The hearing records shall be left open for a period of 20 days following the hearings to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearings. Any revisions of the Agreement following each of the public hearings or otherwise shall be finalized, reduced to writing, approved by the Agency, and signed by the Director, and Chairman of the Agency, and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of EPA for review and approval. The Director and Regional Administrator shall make any such revised agreements available to the public for inspection and copying.

(3) All agreements between the State of Minnesota and the Regional Administrator are subject to review by the Administrator of EPA. If the Administrator of EPA determines that any provisions of such agreements do not conform to the requirements of Section 402(b) of the Act, or Guidelines, he shall notify the State and the Regional Administrator of any revisions or modifications which must be made in the written agreements.

(4) This Agreement shall be construed pursuant to the law of the United States and the State of Minnesota.

(5) This Agreement shall take effect upon the date of approval of Minnesota's NPDES permit program by the Administrator pursuant to Section 402(b).

(6) This Agreement may be terminated by the Administrator pursuant to Section 402(c) of the Act or, if the present level of EPA program grant funds for the NPDES permit program described in this Agreement is reduced substantially, by the Agency upon 30 days written notice to the Administrator and Regional Administrator. This Agreement may be modified at any time upon written agreement of the parties.

(7) The Regional Administrator may waive in writing his rights to receive, review, object to, or comment upon, forms, applications, notices and proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be issued by the Regional Administrator before the Agency can issue a NPDES permit without EPA approval. In the event of such written waiver by the Regional Administrator, the Agency

shall, until subsequent written notice to the contrary from the Regional Administrator, discontinue transmitting copies of such forms to the Regional Administrator as otherwise provided herein.

DATED: May 7, 1974

DATED: April 16, 1974

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION V

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

By Francis T. Mayo
FRANCIS T. MAYO
Regional Administrator

By Harold D. Field, Jr.
HAROLD, D. FIELD, JR.
Chairman

By Grant J. Merritt
GRANT J. MERRITT
Executive Director

APPROVED: John Decker
Administrator
Environmental Protection Agency

June 28, 1974
Date